

REMARKS/ARGUMENTS

Claims 1-21 are pending in the present application. Claims 1-5, 9-13, 15-17 and 19-21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tarlton et al. (USPN 4,627,529). Claim 18 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Tarlton in view of Thompson (USPN 1,651,912). Claims 8 and 14 have been considered allowable subject matter. Applicant respectfully disagree with the findings of the office action and requests reconsideration.

Claims 1-5, 9-13, 15-17 and 19-21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tarlton. Applicant asserts that the rejection to claim 1 is improper because each and every limitation of claim 1 is not taught or rendered obvious by the Tarlton reference. Claim 1 requires, *inter alia*, "a plastic guide profile having a guide surface over which displaceable objects can slide directly or via a product carrier" (emphasis added). US Pat No 4,627,529 to Tarlton et al. does not teach this limitation. Tarlton et al. instead teaches an "outer guide 42 which extends about the spiral conveying path." '529 at Col. 3, lines 37-38. In Figs. 1, 2, 3 and 4 object 42 is indicated as the external upright wall that prevents transported goods to fall sideways off of the conveyor chain 24. Object 42 is thus not an item "over which displaceable objects can slide."

Specifically, in the present invention the claim limitation "plastic guide profile having a surface over which displaceable objects can slide directly or via a product carrier" is most closely compared with tracks 28, 30 ("the conveyor path is supported and defined by a chain track which comprises a pair of transversely or laterally spaced upper tracks 28, 30 and lower tracks 28A, 30A supported on a bracket

32." (Tarlton, Col. 3, lines 24-28)). From these tracks 28, 30 is also disclosed that they are "preferably made of ultra high molecular weight polyethelene." (Tarlton, Col. 3, lines 51-52).

In the view of the Applicant there is no disclosure in Tarlton that "the guide profile (thus, the tracks 28, 30) is engaged at least at two spaced apart positions by the support structure, at least one engaging position of which consists of a free support of the guide profile on the support structure such that the freely supporting side of the guide profile is displaceable relative to the support structure." The figures 2-5, 8 and 9 of Tarlton all point in another direction; the tracks 28, 30 are not indicated to be engaged on "two spaced apart positions" let alone that "one support side is displaceable relative to the support structure." As a result, Tarlton does not teach this limitation and Applicant asserts the obvious rejection is overcome.

Claim 1 also in part requires "a plastic guide profile having a guide surface over which displaceable objects can slide directly or via product carrier." Tarlton is silent as to what the material is being used for the support rod 42 and specifically whether the support rod is made of plastic or not. The office action asserts that while Tarlton is silent regarding the material of guide profile 42 the selection of a known material based on its suitability for intended use is a design consideration well within the state of the art. Applicant cannot agree. In this instance, having a plastic guide profile is not a mere design choice. According to the summary of the invention, "It is found in practice that a sufficient strength of the plastic guide profile can be obtained at limited cost when the guide profile is

manufactured from high molecular polyethelene." (Page 3, lines 11-14). Thus, a cost advantage is presented and the choice to make the device plastic is not merely a design choice.

Consequently, Applicant asserts this limitation is overcome.

Claim 1 also requires in part "characterized in that the guide profile is engaged at least at two spaced apart positions by the support structure." The office action does not present a guide profile that is engaged at least at two spaced apart positions by a support structure and thus a *prima facie* case of obviousness is not presented. Instead, the office action considers support rod 42 as the guide profile and bracket 32 as the support structure. As shown in Fig. 5 the rod 42 is not engaged at two spaced apart positions by the brackets 32 and instead the support rod 42 extends through member 34. Thus, the item identified as the guide profile is not engaged in two spaced apart positions by the item identified as a support structure and thus a *prima facie* case of obviousness has not been presented. Thus, Appellant respectfully requests reversal regarding the rejection.

Claim 1 in part requires "at least one engaging position of which consists of a free support of the guide profile on the support structure such that the freely supporting side of the guide profile is displaceable relative to the support structure." This structure is not taught by the Tarlton reference. The final office action asserts that bracket 32 is the support structure. Bracket 32 is a unitary member comprising a central tubular member 34 secured at opposite ends to opposed U-shaped flange members 36, 38 with the flanges facing each other so as to provide support for a conveyor. (Col. 3, lines 24-33). A support rod 42 extends through member 34 and is secured at one end to core 10. (

Col. 3, lines 28-38). Thus, the bracket 32 does not support the rod 42, or present a freely supporting side of a guide profile that is displaceable to the bracket. Thus, again this limitation is not met and Appellant respectfully requests the rejection be withdrawn. Additionally claims 2-5, 9-13, 15-17 and 19-21 depend on claim 1 and for at least this reason are considered in allowable form.

Claim 18 depends from claim 1. For the reasons set forth above with respect to the rejection of claim 1 under 35 USC § 102(b), and incorporated by reference as if fully set forth herein, Tarlton et al. does not teach all of the limitations of the base claim. As respects claim 18, Thompson does not cure Tarlton et al., as Thompson, directed to a cooling can track, does not teach a plastic guide profile having a guide surface over which displaceable objects can slide.

Because the Examiner has failed to establish a *prima facie* case of obviousness, the Examiner's rejection of claim 18 cannot stand, as a matter of law. Appellant requests that these rejections be withdrawn. Thus, a *prima facie* case of anticipation or obviousness has not been made in this application and Appellant respectfully requests reversal of all rejections.

CONCLUSION

If any issues remain that may be expeditiously addressed in a telephone interview, the Examiner is encouraged to telephone the undersigned at 515/558-0200.

All fees or extensions of time believed to be due in connection with this response are attached hereto; however, consider this a request for any extension inadvertently

omitted, and charge any additional fees to Deposit Account 50-2098.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Zarley', with a stylized flourish extending from the top left.

Timothy J. Zarley
Reg. No. 45,253
ZARLEY LAW FIRM, P.L.C
Capital Square
400 Locust Street, Suite 200
Des Moines, IA 50309-2350
Phone No. (515) 558-0200
Fax No. (515) 558-7790
Customer No. 34082
Attorneys of Record

- JLH/bjs -